



SURFACE TRANSPORTATION BOARD

[Docket No. EP 682 (Sub-No. 12)]

2020 Tax Information for Use in the Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Board is publishing, and providing the public an opportunity to comment on, the 2020 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

DATES: Comments are due by July 14, 2021. If any comments opposing AAR's calculation are filed, AAR's reply will be due by August 3, 2021. If no comments are filed by July 14, 2021, AAR's calculation of the 2020 weighted average state tax rates will be automatically adopted by the Board, effective July 15, 2021.

ADDRESSES: Comments should be filed with the Surface Transportation Board via e-filing on the Board's website.

FOR FURTHER INFORMATION CONTACT: Nathaniel Bawcombe at (202) 245-0376. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's Simplified Standards for Rail Rate Cases, EP 646 (Sub-No. 1), slip op. at 10 (STB served Sept. 5, 2007),¹ as further revised in Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method (Simplified Standards—Taxes in

¹ Aff'd sub nom. CSX Transp., Inc. v. STB, 568 F.3d 236 (D.C. Cir. 2009), vacated in part on reh'g, 584 F.3d 1076 (D.C. Cir. 2009).

RSAM), EP 646 (Sub-No. 2) (STB served Nov. 21, 2008). RSAM is intended to measure the average markup that the railroad would need to collect from all of its “potentially captive traffic” (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. § 10704(a)(2) (i.e., earn a return on investment equal to the railroad industry cost of capital). Simplified Standards–Taxes in RSAM, EP 646 (Sub-No. 2), slip op. at 1. In Simplified Standards–Taxes in RSAM, EP 646 (Sub-No. 2), slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the Board’s annual RSAM calculation. *Id.* at 5-6.

Pursuant to 49 C.F.R. § 1135.2, AAR is required to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad for the previous year. On May 28, 2021, AAR filed its calculation of the weighted average state tax rates for 2020, listed below for each Class I railroad:

Weighted Average State Tax Rates

Railroad	2020	2019	% Change
BNSF Railway Company	5.119%	5.234%	-0.115%
CSX Transportation, Inc.	5.101%	5.097%	0.004%
Grand Trunk Corporation	8.124%	8.129%	-0.005%
The Kansas City Southern Railway Company	5.139%	5.711%	-0.572%
Norfolk Southern Combined Railroad Subsidiaries	5.713%	5.697%	0.016%
Soo Line Corporation	8.122%	8.181%	-0.059%
Union Pacific Railroad Company	5.598%	5.714%	-0.116%

Any party wishing to comment on AAR's calculation of the 2020 weighted average state tax rates should file a comment by July 14, 2021. See 49 C.F.R. § 1135.2(c). If any comments opposing AAR's calculations are filed, AAR's reply will be due by August 3, 2021. Id. If any comments are filed, the Board will review AAR's submission, together with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR's railroad-specific tax information. Id. If no comments are filed by July 14, 2021, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 15, 2021. Id.

Decided: June 9, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

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